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IN THE

Supreme Court of the United States

October Term, 1961.

No. 282.

ATLANTIC AND GULF STEVEDORES, INC.,
Petitioner,

v.

ELLERMAN LINES, LTD.
and
THE CITY LINE, LTD.,
Respondents.

BRIEF IN OPPOSITION TO MOTION OF THE NATIONAL ASSOCIATION OF STEVEDORES FOR LEAVE TO FILE BRIEF IN SUPPORT OF PETITIONER.

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The respondents oppose the motion of the National Association of Stevedores [hereinafter "the stevedores"], primarily because the stevedores seek to argue matters which are not fairly encompassed within the issues which are before this Court for decision.

The brief for the petitioner is before us and presents three questions [brief for petitioner, page 2]. All deal with one phase or another of the question of the right of the court

below to set aside a jury verdict and enter judgment against the petitioner notwithstanding that verdict.

With respect to these, the points in the case, the stevedores concede that "the petitioner will adequately present" [motion, page 2, paragraph 4], the argument having to do with jury trial and the right of the court below to set aside a verdict and judgment based thereon.

Instead, the stevedores, after having disclaimed that anything in their brief will be of assistance to the Court upon the issues presented by the petitioner, seek to set up three new points which were not submitted to the jury or considered by the court below, but which the stevedores have culled from pleadings or arguments of counsel addressed to the court and, having stated these new questions [page 6], proceed to argue them. This injection of new issues not submitted for jury determination in the district court or considered by the court of appeals would require respondent, if it would answer them, to make extensive references to the record to demonstrate the fact that the points the stevedores make are really not in the case. The stevedores have taken such broad liberties with the factual background that this would impose an unfair burden upon respondent without assisting the Court to determine the issues which the case presents.

More than that, the argument which the stevedores present seems designed to attempt to grind another ax for the stevedores and to influence this Court into a position in this case which would be in direct and irreconcilable conflict with legislation of recent enactment and the regulations promulgated under that Congressional mandate. In August of 1958 Congress amended the Longshoremen's and Harbor Workers' Compensation Act and added a new section, 33 U. S. C. A. 941. The new statute imposed upon the employer the obligation of owing to the safety of his employees engaged in stevedoring and other occupations along the shores which are covered by the Act. It empowered the

Secretary of Labor to promulgate and enforce regulations for health and safety.

More recently other regulations have placed upon the Coast Guard responsibility for promulgating and enforcing regulations having to do with the ships' end of the cargo-handling operation. The latter do not take effect until 1962. See 26 Federal Register [November 23, 1961] 10995-11022.

The stevedores do not flatly state their disapproval of the division of responsibility made by these two sets of regulations, but it is clear from their discussion [page 16] that they are not "yet" [page 16, footnote] reconciled to this division of responsibility established by the regulations as between stevedore and shipowner. In short, stevedores seek to have this Court, indirectly, rule upon or otherwise make some statement which might, in future, make less burdensome to stevedores the responsibilities which the regulations have planted squarely upon them. Stevedores argue that the responsibilities imposed by the regulation are "joint" [page 15, footnote 6] when the regulations themselves delineate completely different spheres of responsibility for safety and safe operation. This is the ax the stevedores wish to grind in the present case and to have this Court point out "the necessity to place responsibility for safety" [page 11] upon the shipowner rather than upon the stevedore, the place where Congress and the regulations have in fact already placed it. That is why the stevedores argue "that the sound administration of justice demands that this Court instruct" upon the law "and restate the controlling principles for the guidance of the trial courts *and for the industry itself*" [page 15]. Emphasis ours.

It is respectfully submitted that the arguments the stevedores wish to make are arguments which should have been, and in fact were, made by the stevedoring industry and the movant itself before a Congressional Committee and before the Department of Labor. It has no proper place

in the argument of the present case and the motion for leave to file this brief amicus curiae in support of the petitioner should be denied.

Respectfully submitted,

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